In the High Court of Judicature at Madras

Dated: 01.03.2006

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Civil Revision Petition (NPD) No.821 of 2002

R.Jaivel,
The President,
Mettupatti Multi Purpose Worker's
Industrial Cooperative Society Ltd.,
63, Ramasamy Street,
Namakkal-637 001. ..Petitioner

..vs..

State of Tamil Nadu, rep.by
The Superintending Engineer,
P.W.D.,
Tank Modernisation Circle,
Vellore-9. ..Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order dated 11.03.2002 made in E.A.No.3 of 2001 in E.P.No.20 of 1999 in O.P.No.122 of 1998 on the file of District Consumer Disputes Redressal Forum, Vellore.

For Petitioner : Mr.N.Manokaran

For Respondent : Ms.Dakshayani Reddy,
Government Advocate

O R D E R

Revision petitioner is the Ex-President of Mettupadti Multi-Purpose Worker's Industrial Cooperative Society, against whom there was an award dated 31.03.1999 passed by the District Consumer Disputes Redressal Forum, Vellore; that award was based for the failure on the part of the revision petitioner in the capacity of the President of the Society to comply with the contract between the Society and the respondent-State of Tamil Nadu, represented by the Superintending Engineer, P.W.D., Tank Modernisation Circle, Vellore. That contract was entered into between them for manufacturing of paddle shutters by the Cooperative Society and for delivery to the Superintending Engineer, P.W.D., Vellore and by

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such an agreement, two cheques for a sum of Rs.2,40,000/- were received by the Society from the respondent. Even after receiving the amount for the performance of manufacturing of paddle shutters by the Cooperative Society, the Society has failed; which eventually culminated into an award passed against the President of the Society and that was an ex parte award dated 31.03.1999 upon an application by the respondent before the Redressal Forum made on 30.11.1998.

2. The revision petitioner preferred an application I.A.No.15 of 2000 under Order IX Rule 13 of Civil Procedure Code, to set aside the ex parte decree awarded, which was dismissed and there was no appeal preferred against the same. Thus, the ex parte decree became final. Respondent thereupon preferred to file an execution petition in E.P.20 of 1999 and Non-bailable warrant was ordered against the individual Jaivel, who was the President of the Society at the time of contract dated 21.10.1993, for the breach of which award happened to be passed against the President of the Society. While Jaivel, the revision petitioner filed a petition to recall warrant, a conditional order was passed, directing to deposit a sum of Rs.20,000/-; against which C.R.P.No. 3463 of 2001 was filed before this Court, wherein the District Consumer Disputes Redressal Forum was directed to reconsider the quantum of deposit; whereupon the Consumer Redressal Forum has modified the quantum as Rs.15,000/- and that was also defaulted to pay by the revision petitioner and resulting in issuance of another warrant; against which, this revision petition arose.

3. Learned counsel Mr.Manokaran quoted Section 39 of the Tamil Nadu Co-operative Societies Act, 1983, which is as follows:-

> " The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of which it is constituted."

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4. The learned counsel for the revision petitioner drew my attention to Section 2(10) C.P.C., Rule 2 (h) of the Co-operative Societies Rules, 1988, Rule 2 (e) of the Consumer Protection Rules, 1988 and Section 39 of the Co-operative Societies Act, 1983.

5. Section 2 (10) C.P.C. defines the judgment debtor as any person against whom a decree has been passed or an order capable of execution has been made. Rule 2(h) of the Co-operative

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Societies Rules, 1988, defines the Judgment debtor as the society against which or the person against whom a decree has been obtained. Rule 2 (e) of The Tamil Nadu Consumer Protection Rules, 1988, defines the opposite party as a person who answers a complaint or claim. However, Section 39 of Co-operative Societies Act, 1983, provides co-operative society as a legal entity entitled to sue and be sued.

6. Learned counsel for the revision petitioner submitted that it is only the society, against which a complaint was lodged; award was passed; and Execution Petition was filed. As nowhere the individual Jaivel, against whom NBW was issued, was found liable for the award, the warrant could not be executed against him.

7. The other contention made by the learned counsel for the revision petitioner is that the question of limitation was not looked into at all. Had the individual Jaivel been granted such opportunity to resist the case on the question of limitation, the award itself could not have been passed. Even though the opposite party remained exparte, it is imperative on the part of the Consumer Court to have considered the question of limitation. It was further argued that simply because the opposite party remained exparte, the Consumer Court cannot entertain an otherwise time barred claim as a claim made in time. It was pointed out that in the earlier order passed in C.P.R.No.3463 of 2001 the society was debarred in racking the question of limitation only on the ground of procedural estoppel and on substantial point regarding limitation.

8. By going into the actuality of the question of limitation, it is found that the complaint was made on 30.11.1998 and according to Section 24 (a) of the Consumer Protection Act, there should have been an application filed within two years from the date of cause of action. Therefore, in order to make the complaint dated 30.11.1998 as within time, the cause of action should have been shown as occurred on or after 30.11.1996. In this case, there is an acknowledgement of liability made on 09.12.1996 and if that is taken into account, the complaint could have been filed even later, that is upto 09.12.1998; that would be the exterior time; the complaint was found filed in time on 30.11.1998. So the question of imitation is of no substance in favour of the opposite party in the claim petition, namely, the revision petitioner.

9. The other contention that was made by the learned counsel for the revision petitioner is about the observation made in A.I.R. 1993 PUNJAB AND HARYANA 215 – Maruti Ltd., Chandigarh v. Pan India Plastic Pvt. Ltd., New Delhi, wherein it was held that decree against Managing Director was not passed in his individual capacity and therefore, action to detain him in prison cannot be

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taken. This was a case where the principle of lifting corporate veil was not applied.

10. Ms.Dakshayani Reddy, learned Government Advocate cited a case law in A.I.R. 1997 DELHI 182 – Ravi Kant v. National Consumer Disputes Rederessal Commission, where the position of law regarding lifting of corporate veil was considered. In that case, argument was advanced that in the absence of any penal provision in the Act envisaging the liability upon which award was passed, no principle of lifting the corporate veil could be applied. This argument was not countenanced in the above judgment of Division Bench of Delhi High Court. What was observed is as follows:-

> " It is true that certain statutes contain specific provision for criminal prosecution of persons in charge of or controlling companies. But, that in our opinion, makes no difference. For example, the Contempt of Courts Act, 1952 did not contain any provision like sub-clause (4) or (5) of Section 12 of the new Contempt of Courts Act, 1971. The latter made specific provision for contempt action against persons in charge of or the management or control of companies. Even though, in the 1952 Act, there was no specific provision, it was held by the Supreme Court in Aligarh Municipality v. E.T.Mazdoor Union, AIR 1970 SC 1767 that (part 6):
>
> " A command to a Corporation is in fact a command to those who are officially responsible for the conduct of its affairs. If they, after being apprised of the order directed to the Corporation, prevent compliance or fail to take appropriate action, within their power, for the performance of the duty of obeying those orders, they and the corporate body are both guilty of disobedience and may be punished for contempt"
>
> In our view, likewise a penal provision, which as stated above, is applicable to a 'company' by the Commission in Section 27 must be treated as applicable to those who are officially responsible for the conduct of its affairs. Here, the two petitioners are the Directors of each of the two companies. We may also point out that in the Supreme Court Judgment aforementioned though on facts, the Executive Officer of the Corporation was exonerated, that was not because he could not be legally made liable but because he was factually not proved to be responsible for not obeying the command of the Court. In our view, as per the principle laid down in the above ruling of the Supreme Court, the penal provisions in Section 27 of the Act can be applied to the Directors of the Companies, notwithstanding the absence of a specific

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provision for action against those in charge of or in control of the affairs of the company."

11. In that case law, reliance was placed upon A.I.R. 1996 SC 2005 p.2013 - Delhi Development Authority v. Skipper Construction Co. It was found that corporate personality cannot be permitted to be used as a cloak for fraud or improper conduct. Inspiration was drawn from (1912) 12 Columbia Law Review 496, wherein it was found that " where the concept of corporate entity as employed to ..... protect crime, the Court will draw aside the web of the entity, will regard the Corporation or company as an association of live, up and doing, men and women shareholders and will do justice between real persons."

12. Again in A.I.R.1997 DELHI 182, reliance was placed in Byford Leasing Ltd. v. Union of India (1995) 57 DLT 623, wherein a Division Bench of Delhi High Court held that under Section 27 of the Act, the Chairman and Managing Director of a company can be proceeded against, he being in charge of the management and control of the affairs of the company.

13. Thus, it becomes well accepted that Co-operative Society can also be considered as an association of persons and the persons associated themselves in the affairs of the society may after lifting the corporate veil be identified in assessing their liability based upon omissions in their official capacity.

14. Here is also a case where it is only the individual who occupied the post of President of the society and it is during that period the omission to comply with the agreement took place. Considering the fact that the society has been represented by a person and identifying the person, who was at fault, the individual Jaivel would become liable.

15. From the above discussion, it is made clear that issuance of NBW against Jaivel in spite of the fact that no decree or award was passed against him in his individual capacity is sustainable in law.

16. Arguing upon maintainability of this revision petition, the learned counsel for the revision petitioner again relied upon 2003-2-L.W. 363 - G. Rajamani v. Petchimuthu & others and submitted that inspite of Section 27 of the Consumer Protection Act, Revision under Article 227 of The Constitution of India is not maintainable. In those cases, the question as to the maintainability of a revision under Article 227 de horse the provisions made in Section 27 about the availability of appellate jurisdiction has not been dealt with; whereas the same was dealt with in a later case reported in 2005-3-L.W.455 - M/s. Max worth

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Homes Ltd. v. V.Raman in the following line:-

> "The present order which is under challenge in the above revision came to be passed was only in the said circumstances under Section 27 of the Act. As such it cannot be suggested that no appeal shall lie as against the said order. Even otherwise, Section 21 (b) of the Act confers wide powers to the National Commission to call for records and pass appropriate orders in respect of any matter pending or orders passed by the State Commission when it appears to the National Commission that the State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. In the light of such wide powers conferred upon the National Commission and in the light of the present facts on hand, I am not inclined to exercise powers under Article 227 of the Constitution."

17. It is very much made clear by the same High Court in a later judgment that when the National Consumer forum can have the jurisdiction to call for the records from the State commission and to set aside the order containing any perverse finding, then naturally alternative remedy is available to approach the National Consumer forum and when that remedy is not exhausted, approaching this Court under Article 227 cannot be considered as maintainable.

18. Thus the revision is devoid of merits and is liable to be dismissed. However, considering the facts and circumstances of the case and the plight of the person who occupied the post of President of the society, he can be permitted to pay the amount in instalments, i.e., Rs.1,00,000/- per annum.

19. Viewed in any angle, the revision is devoid of merits and the same is dismissed. No costs.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

The District Consumer Disputes Redressal Forum,
Vellore.

1 cc to Mr.N.Manokaran, Advocate, Sr. 9935
1 cc to the Additional Govt. Pleader, Sr. 10000

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